No. 76-758

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1976

CHARLES T. SINK, PETITIONER

v.

CECIL D. ANDRUS, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

DANIEL M. FRIEDMAN,
Acting Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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In November 1974, a federal coal mine inspector, acting pursuant to the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 742 *et seq.*, 30 U.S.C. 801 *et seq.*, ordered petitioner to take certain corrective actions with respect to his family-operated underground coal mine. Petitioner appealed from this order to the Board of Mine Operations Appeals, contending that the mine is not subject to the Act, because only some of the mine's products enter interstate commerce[1] and it is worked only by petitioner and his son. The Board rejected these arguments and affirmed the order (Pet. App. 1c-10c). The court of appeals affirmed *per curiam* (Pet. App. 1a-2a).

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[1]During the period September 1973 through November 1974, 738 tons of coal from petitioner's mine, approximately 25 percent of its total production, entered interstate commerce (Pet. App. 3c).

The decision of the court of appeals is correct and is not in conflict with the decision of any other federal court. Petitioner raises no issue warranting review by this Court.

1. The Federal Coal Mine Health and Safety Act of 1969 was enacted to assure the observance of minimal safety standards in all of the nation's coal mines whose products enter or affect commerce. To this end, Section 4 of the Act, 30 U.S.C. 803, provides that "[e]ach coal mine, the products of which enter commerce, or the operations or products of which affect commerce * * * shall be subject to the provisions of this Act." It is clear that Congress, in covering not only those mines whose products enter commerce but also those whose products only affect commerce, did not intend to limit the coverage of the Act solely to mines all of whose products actually enter interstate commerce. If a mine's products enter or affect commerce, the mine is covered by the plain language of the Act. Since a substantial portion of petitioner's mine's products enter interstate commerce, it is subject to the Act.[2]

2. The fact that a mine may be worked only by its owners[3] and therefore have no employees is immaterial to the coverage of the Act. The Act is designed to protect miners. 30 U.S.C. 801. The term "miner[s]" is defined by reference to activity, not employment status. Both petitioner and his son are "miner[s]" since they are "individual[s] working in a coal

[2]Contrary to petitioner's assertion, the decision below is not in conflict with *Morton* v. *Bloom*, 373 F. Supp. 797 (W.D. Pa.). In *Morton*, the court found that "[t]he coal which defendant mines is sold exclusively within Pennsylvania." *Id.* at 798. Similarly, the court in *Morton* v. *Pappal*, No. 75-95, W.D. Pa., decided May 5, 1975 (Pet. App. 1e-4e), found that "[n]one of the [defendant's] coal leaves Pennsylvania, or for that matter, Indiana County" (*id.* at 1e).

[3]Petitioner argued below that his son was not an employee but a partner. The record, however, shows that the mine is owned by petitioner and his wife (Pet. App. 1f). In any event, whether the son is a partner or an employee does not affect the coverage of the Act.

mine." 30 U.S.C. 802(g). To ensure the protection of all miners within the federal commerce power, the Act covers all mines whose products enter commerce or whose operations or products affect commerce; thus, unlike other safety statutes (*e.g.*, the Occupational Safety and Health Act of 1970, 84 Stat. 1590, 29 U.S.C. 651), the Act is not limited to establishments having employees in the technical sense.[4] It follows that a family-operated mine whose products enter commerce is subject to the Act.[5]

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

JANUARY 1977.

[4]The Federal Coal Mine Safety Act of 1952, Section 201(b), 66 Stat. 693, exempted "any mine in which no more than fourteen individuals are regularly employed underground." This exemption was repealed in 1966, Federal Coal Mine Safety Act Amendments of 1965, Section 2(a), 80 Stat. 84, and did not reappear in the 1969 Act.

The only mention of the concept of "employment" in the 1969 Act is in Title IV, authorizing black lung benefits in respect to miners disabled by pneumoconiosis (black lung disease) who were "employed" in a coal mine. See Sections 402(d), 411(c), 422(a), (c), and (h) of the Act, 83 Stat. 792, 793, and 796, amended, 30 U.S.C. (and Supp. V) 902(d), 921(c), 932(a), (c) and (h). Thus, a mine having no "employees" is exempt only from Title IV of the Act.

[5]Statistics for 5,243 underground bituminous coal mines in 1966 showed that the highest fatality rate (2.31 per million man hours) occurred in mines in which 1 to 4 men worked (1,764 mines). Hearings on S. 355, *etc.*, before a Subcommittee on Labor and Public Welfare, 91st Cong., 1st Sess. 912 (1969). The bill that emerged from the Senate Committee on Labor was S. 2917. Senator Williams, a chief sponsor, described that bill as providing "the means to improve the health and safety conditions and practices at all underground coal mines * * *." 115 Cong. Rec. 27126 (1969).